IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRL.A.No. 590 of 2007()

SC.221/2003 OF ADDL. SESSIONS COURT (ADHOC) II, THODUPUZHA.
CP.18/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, ADIMALI

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APPELLANT: ACCUSED NO.2

SURENDRAN, C.NO. 1056
CENTRAL PRISON, THIRUVANANTHAPURAM.

BY ADV. K.P.HARISH[STATEBRIEF]

RESPONDENT: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY ADV. PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 590 OF 2007

Dated this the 6th day of July, 2007

JUDGMENT

The second accused in S.C. No.221 of 2003 on the file of the Additional Sessions Court (Ad hoc) II, Thodupuzha is the appellant. He faced trial for the offences punishable under Sections 459, 307, 326 and 324 read with Section 34 I.P.C.

2. The prosecution case was that on 4.7.2001 at about 12.15 in the night, the second accused along with the first accused, who died before filing the final charge, trespassed into the house of PW.1 and the first accused inflicted cut injuries with chopper on the back of the head, neck left elbow and right hand of PW.1. The second accused hit her with a stick on her left wrist causing fracture. The first accused then inflicted injuries on PW.2, the husband of PW.1 with chopper and the second accused hit him on his back with stick. To prove the case against the appellant, the prosecution examined PWs.1 to 8 and produced Exts.P1 to P11 as well as MO.1. No oral or documentary evidence was adduced on the side of the

defence. After closing the prosecution evidence, the second accused was questioned under Section 313 Cr.P.C. He denied the prosecution allegation and stated that he was innocent. However, the trial court, after considering the entire evidence, found the second accused guilty under Sections 326 and 324 read with Section 34 I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year for the offence punishable under Section 326 read with Section 34 I.P.C.. He was also sentenced to undergo rigorous imprisonment for one year for the offence punishable under Section 324 read with Section 34 I.P.C. The substantive sentences were ordered to run concurrently. The benefit of Section 428 Cr.P.C. was also granted to the accused. The above judgment of the trial court is challenged in this appeal.

3. Since the appeal is filed through the jail authorities, a State Brief is appointed to defend the appellant. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. The learned counsel appearing for the appellant contends that the evidence of PWs.1 and 2 are not sufficient to prove the prosecution case

and that the investigating officers had not made any effort to recover the weapons used for the commission of the offence. Counsel also submits that the sentences awarded are excessive and prays that a lenient view may be taken with regard to the sentence.

5. The trial court relied on the evidence of PWs.1, 2 and 5 as occurrence witnesses. PW.1 is the defacto complainant. She deposed that the incident happened after 12'O clock in the night at her house. She stated that she was sleeping in her house along with her family and that she and her husband came out of the house on hearing the dogs barking. She further stated that at that time, the second accused hit her on her left and right wrist with a stick and the first accused inflicted cut injuries with a chopper and that somebody hit PW.2, her husband, with a stick. This witness further stated that she and her husband escaped from the house along with their children and took shelter in the house of PW.5 from where she was taken to the hospital. She also gave the first information statement regarding the incident. According to her, the hose pipe for taking water to her house was destroyed by the sister of the second accused through whose property the hose pipe was drawn and hence a complaint was filed before the police and that this was the motive for the attack. The evidence of PW.1 is corroborated by the evidence of PW.2. But he

stated that he was not attacked by anyone and that he sustained the injury when he fell down while running to the house of PW.5.. PWs.3 and 5 were the persons who had taken PWs.1 and 2 to the hospital. The evidence of PW.5 supports the versions given by PW.1 and 2. PW.4 was the Village Officer who proved Ext.P3 scene plan and PW.6 was the Sub Inspector of Police who registered the crime. PW.7 was the Circle Inspector of Police, Adimaly who took over the investigation and laid the charge against the accused. PW.8 was the doctor who proved Exts.P10 and P11 wound certificates issued to PWs.1 and 2 respectively by Dr. Kassim Bava.

6. It has come out in evidence that there was sufficient motive for the appellant as well as the first accused to trespass into the house of PW.1. The evidence of PWs.3 and 5 would clearly show that PWs.1 and 2 were taken to the hospital subsequent to the incident. The trial court considered the evidence of PW.6 and found it acceptable. PW.6 had stated before the court below that on getting the information, he went to the house of PW.1 and then to the hospital. However, this witness stated that the first information statement was recorded by Head Constable Simon Lobo. From the evidence of the police officials and the evidence of PWs.1 and 2 supported by the evidence of PWs.3 and 5, the trial court was justified in finding that the appellant along with the first accused

trespassed into the house of PW.1 and inflicted injuries on her.

7. The next question to be considered is with regard to the offence committed by the appellant and the first accused. The trial court relied on the evidence of PW.8 who proved Exts.P10 and P11 wound certificates issued to PWs.1 and 2 respectively by Dr. Kassim Bava. Fifteen injuries were noted on the body of PW.1 out of which four were incised wounds and three were fractures. PW.8 stated before the court below that it was possible that the injuries found on the body of PW.1 could have been inflicted with a weapon like chopper.

8. Learned counsel appearing for the appellant submits that the weapon was not recovered by the police and hence it is not possible to hold that the accused committed the offence punishable under Section 326 I.P.C. The fact that the weapon used for inflicting the injuries was not recovered cannot be taken as a ground to find that the offence does not come under Section 326 I.P.C. It has come out in evidence that the first accused had inflicted injuries on the body of PW.1. The trial court also found that there was evidence to prove that the second accused had hit PW.1 with a stick. The finding of the trial court in this regard is perfectly justifiable and based on evidence.

9. Yet another question to be considered is regarding the sentences awarded against the appellant. It has come out in evidence that the appellant and the first accused had a specific motive to trespass into the house of PW.1 at midnight and to cause bodily injuries to her. PW.1 was aged more than 45 years and she was sleeping in her house. Considering all these aspects, this Court is of the view that the appellant deserves no leniency.

The Crl. Appeal is accordingly dismissed, confirming the judgment of the court below.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.590/2007

JUDGMENT

6TH JULY, 2007.